Supreme Court, U.S.
FILED
02 457 AUG 1 2002
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

MORETON ROLLESTON, JR.,

Petitioner,

v.

SANDEASE, LTD., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

MORETON ROLLESTON, JR.
2035 Garraux Road, N.W.
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Petitioner Pro Se.

Washington, D.C. • THIEL PRESS • (202) 328-3286

17 pp

QUESTIONS PRESENTED FOR REVIEW

This is a RICO case. The violations of the U.S. and Georgia RICO (O.C.G.A. §16-14-4) statutes were conceived, initiated, conducted and supervised by an attorney, Respondent Koski. His associates and co-conspirators were the clients of this attorney; they included four individuals and 2 corporations.

The illegal scheme is described in detail in Exhibit "C" to this petition. The scheme was carried out completely by Koski and all other respondents. The predicate acts are still being pursued.

This ruling of the trial court violated Amendment VII of the U.S. Constitution, U.S. RICO and Georgia RICO.

LIST OF PARTIES

1. Moreton Rolleston, Jr.
   Petitioner

2. Sandease, Ltd., Coast House, Ltd., Joseph A. McBride, Timothy B. McBridge, Frank McBride, Robert C. Koski,
   Respondents.

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Constitutional Provisions:

Amendment VII of U.S. Constitution 1

PETITION FOR A WRIT OF CERTIORARI

The jurisdiction of this Court to review the judgment of the Supreme Court of Georgia is involved under 28 U.S.C. Paragraph 1257.

STATEMENT OF CASE

The allegations of the complaint regarding Koski's letter (Appendix C) were admitted. There was no hearing. There was no evidence introduced. The trial court was in error by granting summary judgment dismissing the complaint and by granting motion for judgment on the pleadings.

ARGUMENT

1.

A RICO violation involving $3,800,000 has survived without punishment. Grounds for jurisdiction is past and is continuing violation of Georgia and U.S. RICO.

2.

Amendment VII of U.S. Constitution guaranteed a trial by jury. The granting of a summary judgment does not meet the standard of trial by jury. The granting of a summary judgment is a trial by a judge and is unconstitutional.

The trial court granted a summary judgment in this case and said judgment violated Article VII to the U.S. Constitution.

3.

The RICO scheme, as described in Exhibit C, is a flagrant, blatant violation of:

(a) O.C.G.A. 16-14-4 (RICO)
(b) O.C.G.A. 16-10-95 (a) (1) (barratry)
(c) O.C.G.A. 13-8-2(a)(5) (champerty)
(d) Rules of professional ethics and conduct of attorneys in Georgia and every other state

4.

Champerty is defined in:

(a) Sapp v. Davis, 176 Ga. 265, 168 S.E. 62
(b) Clark v. Harrison, 182 Ga. 56, 184 S.E. 620

CONCLUSION

Brevity is precious. The trial court and the Supreme Court of Georgia erred.

Respectfully submitted,

MORETON ROLLESTON, JR.
2035 Garraux Road, N.W.
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Petitioner Pro Se.

APPENDIX A

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: May 28, 2002

Case No. S02C0716

MORETON ROLLESTON, JR. v. SANDEASE, LTD., et al.

COURT OF APPEALS CASE NO. A01A2322

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

_____

_____

_____

_____

Sherie M. Welch, Clerk

APPENDIX B

THIRD DIVISION
JOHNSON, P. J.,
RUFFIN and ELLINGTON, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, December 14, 2000) http://www.appeals.courts.state.ga.us/rules.html

January 9, 2002

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A01A2322. ROLLESTON v. SANDEASE, LTD, et al.

ELLINGTON, Judge.

In this case, the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment;

(2) No reversible error of law appears and an opinion would have no precedential value;

(3) The judgment of the court below adequately explains the decision; and

(4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Johnson, P.J., and Ruffin, J., concur.

APPENDIX C

REMLER, KOSKI & NEAR
A Professional Corporation
Attorneys At Law

1400 RESURGENS PLAZA
945 EAST PACES FERRY ROAD
ATLANTA, GEORGIA 30326
TELEPHONE (404) 239-0200
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ALBERT N. REMLER
ROBERT C. KOSKI
BRIEN C. NEAR
MARC G. MELIKIA
OF COUNSEL
DAVID R. KAM

August 22, 1991

Taylor W. Jones, Esquire
Myles E. Eastwood, Esquire
JONES, BROWN, BRENNAN & EASTWOOD
1900 One Georgia Center
600 West Peachtree Street, NW
Atlanta, GA 30308

Re: *Coast House, Ltd., and Sandease, Ltd. v. John Randolph Cherry, Executor,* Fulton County Superior Court, Civil Action File No: D-81176

Gentlemen:

This is to confirm the terms we have agreed upon in complete satisfaction of our clients' judgment against your client, the Estate of Rebecca Sims. Signature hereunder at the space provided shall constitute a final acceptance of the agreement, with the necessary papers to be completed and presented for final execution on or by Friday, September 6, 1991. The terms we have agreed upon are as follows:

(1) Taylor James and the Estate shall have an option for the purchase or designation of a purchaser of the house and lot at 1777 West Paces Ferry Road for a purchase price, payable all cash net to the Plaintiffs, in the amount of $500,000.00. This option shall be open until Friday, September 6, and shall require the payment by the purchaser of $50,000.00 earnest money, which sum will be non-refundable, except in the event of a failure of title, and will be held in our escrow account until closing and will apply toward the purchase price at closing. The sale must be closed on or before October 21, 1991. If such a contract is in existence, signed by the Sims Estate and the purchaser, and the $50,000.00 earnest money is paid by 5:00 p.m., on September 6, 1991, the Sims Estate will not be required to convey title to the house to our clients and your client will instead pay the $500,000.00 in cash out of the proceeds of the closing on or before October 21, 1991.

(2) If you or your client are not able to produce a signed contract accompanied by $50,000.00 earnest money as outlined in paragraph 1 above by 5:00 p.m., September 6, 1991, we will at that time have a closing in which your client will convey to our clients the house and lot at 1777 West Paces Ferry Road by our Executor's Deed with affidavit of title, in a form consistent with that used in the transfer of the Estate's interest in Camellia Cottage to the plaintiffs. The house will be conveyed free and clear of all liens and uncumbrances, except 1991 property taxes. The taxes will be prorated as of September 6, 1991. My clients will pay any taxes due but not paid on the property, and will accept an unsecured note from the estate for that sum plus any additional pro ration, which will be payable by the estate from the sale of any other property in the estate, and in any event; no later than August 16, 1992.

(3) The house is presently inhabited by a tenant, who is a friend of Randy Cherry and who is entitled to thirty days' notice to vacate the property. We will require that he be given immediate notice to vacate, pursuant to that entitlement. Upon his vacation, Randy Cherry will have an additional five days to move the furniture and personal property out of the house, but all items of furniture and personal property shall remain the property of the Sims Estate.

(4) The Plaintiffs will agree to the distribution by the Estate to the heirs of Mrs. Sims, free of all claims under the judgment and free of any claims based upon or arising out of the note contemplated in paragraph 7 hereafter, of both Cherokee County properties, the Wight Family Partnership, any other partnership in which the Estate may have any interest, the proceeds of any Estate tax return refund, all personal property owned by Mrs. Sims before her death, and any liquid assets presently in the Estate. At the time of conveyance of the property at 1777 West Paces Ferry Road to my clients or, in the alternative, the payment of $500,000.00 cash to my clients, my clients will execute quitclaim deeds releasing any and all liens and claims against the two Cherokee County properties and quitclaim bills of sale releasing any and all claims or liens against the above-described intangible assets, liquid assets and personal properties.

(5) The Estate will be given a credit against the amount of the judgment for the appraised value of the property at 1777 West Paces Ferry road as stated on the Estate tax return, and my clients will support the Estate in establishing that amount as the value of the property agreed upon at the time of settlement in the event that the Property is transfered to the Plaintiffs pursuant to this agreement. Otherwise, the estate will receive a credit

against the judgment in the amount of the cash actually paid.

(6) The Estate will execute an unsecured note bearing interest the legal rate of 12% per annum to my clients in the amount of the judgment, including accrued interest, less any payments and/or less the agreed upon appraised value of the property at 1777 West Paces Ferry Road.

(7) Your client will hire the attorneys designated by the Plaintiffs to pursue a claim for legal malpractice and/or contribution against Mr. Moreton Rolleston, Jr. on behalf of the Estate. My clients will agree to pay any and all necessary expenses involved in said litigation to be pursued on the basis of a contingent fee not to exceed thirty percent. The net recovery of said claim will be payable upon receipt toward the note referred to in paragraph 7 above; with any remainder after full payment of the note to be paid to the Estate. This litigation is to be commenced as soon as practicable.

(8) The Sims Estate and your law firm as its attorneys agree to fully and completely cooperate with the plaintiffs in all efforts taken for the purpose of pursuing the contribution and malpractice claims against Mr. Rolleston, the pending *O.C.G.A.* §9-15-14 claim and any other claims asserted against Mr. Rolleston, which cooperation will include providing complete access to your files and reasonable consultations with the attorneys representing the plaintiffs.

(9) The plaintiffs will indemnity and hold harmless the Sims Estate, its executors and heirs and its attorneys as to any claims for abusive litigation under §9-15-14, *Yost v. Torok,* or its statutory successor, or any claims for conspiracy or similar torts alleged to result from or relate to this settlement agreement as applied to any

claim pursued on behalf of the estate against Mr. Rolleston. The attorney(s) to be selected by the plaintiffs pursuant to paragraph 7 above shall also represent the Estate at the hearing dealing with potential liability of Mr. Rolleston, pursuant to §9-15-14.

(10) The parties will agree that there is no basis for appeal of the judgment in this litigation and the pending motion for new trial will be dismissed.

I believe the above incorporates the terms we have agreed upon. Please signify your agreement by signing the enclosed copy of this letter and returning it to me. Thank you.

Sincerely,

/s/ Robert C. Koski
Robert C. Koski

ACCEPTED BY

/s/ Taylor W. Jones
Attorney for the estate of
Rebecca W. Cherry Sims

"Exhibit B"

[SEAL]
SUPERIOR COURT
FULTON COUNTY, GEORGIA

PROMISSORY NOTE

JOHN RANDOLPH CHERRY, as Executor under the last will of REBECCA WIGHT CHERRY SIMS, for value received does hereby promise to pay on demand to the order of SANDEASE, LTD. and COAST HOUSE, LTD. as joint venturers, the sum of Three Million Two Hundred Ninety Five Thousand Six Hundred Fifty Five & 88/100 Dollars ($3,294,655.88) with interest from the date hereof until paid at the rate of Twelve per cent (12%) per annum, and all costs of collection, including fifteen per cent of the principal and interest as attorney's fees if collected by legal action or through an attorney at law.

To secure the payment of this note, the maker hereby conveys and assigns to holder, pursuant to the terms and conditions of that certain letter agreement dated August 22, 1991 between the parties acting through their attorneys, the following property:

> The net proceeds after deduction of Attorneys Fees and Expenses recovered on any and all claims, settlements, or judgments based upon contribution, negligence, or any other legal theory against Moreton Rolleston, Jr., his heirs and assigns, or any other person, corporation, or other entity, arising as the consequence of advice rendered by Moreton Rolleston, Jr. for Mrs. Rebecca Wight Cherry Sims, in relation to her sale of her interest in that property situated in Glynn County, Georgia known as Camellia Cottage, and that certain judgment rendered in favor of Coast House, Ltd. and Sandease, Ltd., against the Maker hereof, namely Fulton County Superior Court Civil Action File Number D-81176.

Demand for payment, presentment, protest, and notice of protest and dishonor, and all other notices or demands whatsoever with respect to this note or the enforcement hereof are hereby waived.

The rights and remedies given herein to the holder are cumulative and in addition to those provided by law.

Given under the hand and seal of the undersigned, this 17th day of September, 1991.

/s/ John Randolph Cherry L.S.
JOHN RANDOLPH CHERRY as executor
under the last will of REBECCA WIGHT
CHERRY SIMS

SUPREME COURT, U.S.
FILED
02 457 AUG 1 2002
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

MORETON ROLLESTON, JR.,

Petitioner,

v.

ESTATE OF REBECCA WIGHT CHERRY SIMS,
JOHN RANDOLPH CHERRY, EXECUTOR,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF GEORGIA

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

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APPENDIX B

FIRST DIVISION
BLACKBURN, C.J.,
POPE, P.J., MIKELL, J.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, December 14, 2000) http:/www.appeals.courts.state.ga.us/rules.html

December 4, 2001

In the Court of Appeals of Georgia

A01A1748, A01A1749, A01A1750. ROLLESTON v. ESTATE OF REBECCA WIGHT CHERRY SIMS, ET AL.

MIKELL, Judge.

In three related appeals, Moreton Rolleston, Jr., appeals the judgment of $4,109,018.16 entered against him on May 10, 2000, the trial court's ruling that he was not indigent and was therefore able to pay the costs associated with his appeal, and an order holding him in contempt. The Estate of Rebecca Wight Cherry Sims and its executor, John Randolph Cherry, (referred to collectively as "the Estate") filed the underlying action against Defendants Rolleston and the Moreton Rolleston Living Trust (the "Trust") seeking to set aside transfers of Rolleston's property into the Trust as fraudulent. The Estate also sought and received an interlocutory injunction prohibiting any transfer of real or personal property from the Trust without approval of the court during the pendency of the underlying suit. Upon Rolleston's appeal

from the injunction, the Supreme Court affirmed. *Rolleston v. Cherry*, ___ Ga. ___ (466 SE2d 866) (1996) (judgment affirmed without opinion).

These combined cases are a continuation of litigation between these parties. In *Rolleston v. Cherry*, 226 Ga. App. 750 (487 SE2d 354) (1997), we affirmed a $5.2 million judgment entered against Rolleston in 1995 for claims of professional negligence, breach of fiduciary duty, and fraud relating to his legal representation of Rebecca Sims. The record shows that while that trial was proceeding in March 1995, Rolleston ordered the liquidation of an offshore Wachovia Bank account containing approximately $500,000. Before judgment was entered on April 7, 1995, Rolleston wrote checks to himself in the total amount of $60,000, a check to his wife in the amount of $150,000, and checks to his secretary, totaling %53,150. Also, between the time the verdict was returned and the entry of judgment, Rolleston recorded deeds in Fulton County and Glynn County transferring all of the real property titled in his name into the Trust. He also transferred all of his personal property. By his own admission, the real property was valued between $12,000,000 and $15,000,000.

In response, the Estate filed the underlying action in this case to set aside the fraudulent conveyances. The court denied Rolleston's subsequent motions for summary judgment and granted partial summary judgment to the Estate on the issue of Rolleston's liability. We affirmed the grant of the Estate's motion for summary judgment and the denial of Rolleston's. *Rolleston v. Cherry*, 237 Ga. App. 733, 735-736(1) (521 SE2d 1) (1999).

In August 1998, while the fraudulent conveyance action was pending, Rolleston recorded a lease transferring all of his real and personal property from the Trust

to the MRJR Limited Partnership for a term of 100 years. The lease violated the interlocutory injunction entered on July 7, 1995, because it transferred an interest in land without the approval of the court. Additionally, the record shows that Rolleston formed the MRJR Limited Partnership on February 24, 1997, and that he was the general partner, and the Trust was the sole limited partner. The trial court held Rolleston in contempt, and we affirmed the order. *Rolleston*, supra, 237 Ga. App. at 737-738 (5).

The Estate levied on Rolleston's Sea Island property on April 21, 1999, in an effort to collect the judgment owed; however, the levy was stayed by Rolleston's filing of a bankruptcy petition in the U.S. Bankruptcy Court for the Northern District of Georgia. The bankruptcy court dismissed Rolleston's petition with prejudice on September 21, 1999, and the U.S. Supreme Court denied Rolleston's petition for writ of certiorari and subsequent petition for rehearing.

The present fraudulent conveyance action appeared on the trial court's calendar on April 11, 2000. The Estate had served Rolleston with its portion of the pre-trial order on April 5; however, Rolleston failed to respond. When the case was called for trial, Rolleston served the Estate in open court with a motion for pre-trial order and a motion in *limine* seeking to limit the evidence produced by the Estate. The court granted the parties a one-day continuance. On April 12, the court deemed Rolleston's proposed pre-trial order inadequate and refused to bind the Estate to a pre-trial order in which Rolleston and the Trust refused to list their witnesses. Rolleston and the Trust did not object, nor did they request an official ruling on their motion for pre-trial order. The court granted Rolleston's motion in *limine* to the extent that it limited

the Estate's right to recover damages or attorney's fees to the fraudulent conveyance action at bar.

During the trial, Rolleston and the Trust moved for a mistrial on the basis that their co-counsel, Michael Pannier,[1] was not qualified to cross-examine the Estate's expert witness on bankruptcy law. The court denied the motion.

At the close of the Estate's case, Rolleston and the Trust moved for a directed verdict on several grounds. The Estate did not oppose the motion for directed verdict in favor of the Trust and in favor of Rolleston in his capacity as Trustee on the issue of liability for damages, and the court granted the motion only as to those defendants. The court denied Rolleston's motion for directed verdict as an individual defendant at that time and again after the defense presented its case.

The jury returned a verdict awarding $718,133 in special damages and $140,885 in attorney fees and finding that the Estate was entitled to punitive damages. The trial proceeded to a second phase on punitive damages. After the Estate presented evidence, the jury returned a verdict on April 21, 2000, finding that Rolleston acted with specific intent to commit harm and awarding punitive damages in the amount of $3,250,000.

Case No. A01A1748

1. First, Rolleston argues that the court erred in proceeding with the trial without entering a pre-trial order. We reject this argument.

---

[1] Rolleston, an attorney, also represented himself and the Trust.

As a preliminary matter, we recognize that Rolleston has failed to provide a statement of the method by which this enumeration of error was preserved for appellate consideration in violation of Court of Appeals Rule 27(a)(1). However, we will briefly address the merits of his argument.

The record shows that Rolleston brought a motion for pre-trial order on the day of trial after failing to respond to the Estate's portion of the proposed consolidated pre-trial order. The court deemed Rolleston's proposed pre-trial order inadequate and refused to bind the Estate to it, because Rolleston and the Trust refused to list their witnesses. Rolleston did not object, nor did he request an official ruling on the motion for pre-trial order. Thus, he cannot show reversible error by the trial court in the absence of a ruling. See *International Ass'n of Bridge Ironworkers, Local 387 v. Moore*, 149 Ga. App. 431, 433(4) (254 SE2d 438) (1979).

Furthermore, even if the court had expressly denied his motion, Rolleston would not be successful on appeal. We conclude that the trial court did not abuse its discretion by declining to enter a pre-trial order. Neither OCGA §9-11-16 nor Uniform Superior Court Rule 7.2 requires the court to sign a proposed pre-trial order. *Swanson v. State Farm Mut. Auto Ins.*, 242 Ga. App. 616, 617 (2) (530 SE2d 516) (2000). Rather, only in cases where a pre-trial conference has been held, OCGA §9-11-16(b) requires the court to issue an order reciting the action taken at the conference and any agreements reached by the parties. Id. No pre-trial conference was requested or held in this case; therefore, the court was not required to enter an order.

Additionally, even if we considered Rolleston's request for a pre-trial order to be a request for a pre-trial con-

ference, the court did not err because the request was not timely. "[I] t is not error to refuse a pre-trial conference where the motion is untimely." *Trustees of Trinity College v. Ferris,* 228 Ga. App. 476, 478(2) (491 SE2d 909) (1997) (the court did not err in refusing a request for pretrial conference on the day of trial). Accordingly, this enumeration of error has no merit.

2. Next, Rolleston assigns error to the court's admission of certain evidence he claims was excluded by his motion in *limine.* Rolleston has failed to cite authority or argument for this error in violation of Court of Appeals Rule 27(a)(3). He has also failed to provide this Court with a statement of the method by which he preserved each alleged error for consideration as required by Rule 27(a)(1). In fact, he simply lists the numerous exhibits he claims were admitted in error without providing citations to the record documenting a single objection or argument regarding the inadmissibility of the evidence.

Accordingly, this enumeration is deemed abandoned. Rule 27(c)(2). "Appellate judges should not be expected to take pilgrimages into records in search of error without the compass of citation and argument." *Sulejman v. Marinello,* 217 Ga. App. 319, 320 (1) (450 SE2d 251) (1995).

3. Similarly, in the next three errors enumerated by Rolleston, Errors Three, Four, and Five, he has failed to provide citation of supporting authority or argument. He claims the trial court erred in denying his motion for a mistrial after it admitted the evidence he challenges in Division 2, in denying his motion in *limine* to exclude evidence of the lease between the Trust and MRJR Limited Partnership, and in denying his motion for directed verdict on the Estate's claim of special damages for the

loss of use of the judgment based on statutory post-judgment interest. Because Rolleston has failed to support these enumerated errors with citation of authority or argument, they are deemed abandoned pursuant to Rule 27(c)(2). *Sulejman*, supra.

4. Next, Rolleston argues that the court erred in denying his motion for directed verdict on the Estate's claim of special damages for the loss of its use of the judgment, because the amount sought by the Estate was entirely speculative. We reject this argument.

It is well-settled that the standard of appellate review of the denial of a motion for directed verdict is the any evidence test. *Pulte Home Corp. v. Woodland Nursery & Landscapes, Inc.*, 230 Ga. App. 455, 456(2) (496 SE2d 546) (1998). "The question before this court is not whether the verdict and judgment of the trial court were merely authorized, but is whether a contrary judgment was demanded." (Citations omitted.) Id. See also OCGA §9-11-50(a). Based on this standard, we conclude that there was evidence to support the jury's verdict on the Estate's special damages claim for loss of use, and that the trial court properly denied the motion for directed verdict and submitted the case to the jury.

The Estate presented evidence of the performance of various investment scenarios from the date the judgment was entered, May 5, 1995, until the date of trial. David Joseph Littlefield, Jr., a stock portfolio manager with fifteen years experience, testified that he calculated the historical returns of five different investment scenarios and that the return on an initial investment of $5,200,000 on May 5, 1995, would have appreciated conservatively in the range of $6,700,000 to $15,000,000. On cross-examination, Littlefield testified regarding the investment scenarios that "[t]here are no projections.

Those are all historical." Additionally, the executor of the Estate, John Randolph Cherry, testified that the time and expense of the litigation necessitated by Rolleston's refusal to satisfy the exiting judgment had damaged the Estate.

In light of the evidence supporting the Estate's claim for special damages for loss of use, the trial court did not err in denying Rolleston's motion for directed verdict, and we affirm.

5. Rolleston also assigns error to the court's denial of his motion for directed verdict on the Estate's claim of punitive damages. Rolleston has failed to support this error with citation of authority or argument in violation of Rule 27(a)(3); however, we will briefly address its merits.

O.C.G.A. §51-12-5.1(b) provides:

> Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

We find that the extensive record provides clear and convincing evidence to authorize the jury's award of punitive damages. See generally *Hudgins & Co. v. J & M Tank Lines,* 215 Ga. App. 308, 309-310 (450 SE2d 221) (1994). For example, Howard H. Johnston, an attorney practicing in the area of trusts and estates, testified that the Trust accomplished none of the estate planning purposes of a living trust. The evidence shows that Rolleston recorded deeds transferring millions of dollars worth of real property into the Trust after the verdict but before judgment had been entered in order

to shield those assets from the Estate.[2] Furthermore, he created the MRJR Limited Partnership and leased all of his real and personal property to that limited partnership in order to prevent the Estate from collecting on the judgment.

Accordingly, there was clear and convincing evidence to support the jury's award of punitive damages, and the trial court did not err in denying Rolleston's motion for directed verdict.

6. Next, Rolleston argues that the court erred in not limiting the amount of the punitive damages award because there was no proof of specific intent to cause harm. Again, Rolleston has failed to support the enumerated error with citations of authority; however, we will briefly address its merits.

Under OCGA §51-12-5.1(g), punitive damages are limited to a maximum of $250,000 for any tort action, unless the jury finds that "the defendant acted, or failed to act, with the specific intent to cause harm." *Alta Anesthesia Assocs. of Ga., P.C. v. Gibbons,* 245 Ga. App. 79, 89(8) (537 SE2d 388) (2000). In *McDaniel v. Elliot,* 269 Ga. 262, 265 (3) (497 SE2d 786) (1998), the Supreme Court held that a party seeking punitive damages must "request both a charge on specific intent to cause harm and a separate finding of specific intent to cause harm by the trier of fact in order to avoid the cap on punitive damages."

In the case sub judice, the court instructed the jury as follows:

---

[2]The deeds were signed on February 27, 1995, approximately one week before the trial began. They were all recorded on or after March 29, 1995.

> If you find that the defendant acted with specific intent to harm the plaintiff, there is no limit to the amount of punitive damages you may award. In other words, the law does not limit you in any way. It's left up to you as to what is fair and just.
>
> However, if you find that the defendant, against whom you are awarding damages, did not act with specific intent to harm the plaintiff, then the punitive damages you may award are limited to a maximum of $250,000. Subject to this limitation, the amount you may award may be as large or as small as you believe necessary to fulfill the purpose of punitive damages.

On the verdict form, the jury responded "yes" to the following statement: "We the jury find that . . . Defendant acted with specific intent to harm Plaintiff." Contrary to Rolleston's argument, there was evidence in the record to support the jury's finding. Accordingly, the trial court did not err in refusing the cap the award of punitive damages. *Alta Anaesthesia Assocs.*, supra at 89-90.

7. Rolleston argues that the trial court erred in admitting plaintiff's exhibit 137, which contained evidence of attorney's fees and expenses. Our review of the record reveals that the exhibit challenged by Rolleston was not admitted into evidence. Accordingly, this enumeration presents nothing for our review.

8. In his enumeration of errors, Rolleston contends in Error Ten that the trial court erred in denying his motion for summary judgment. However, in the argument portion of his appellate brief in support of this error, he states that "[t]he Court erred in failing to grant [his] Motion for Mistrial after the court reversed itself and allowed evidence of conduct subsequent to the first hearing in this case in 1998." Rolleston has not provided

a single citation to legal authority or to the record, not has he provided any further argument in support of this error. Accordingly, this error is deemed abandoned. Rule 27(c)(2) and (3); *Salejman,* supra.

In summary, the judgment of the trial court appealed in Case No. A01A1748 is hereby affirmed.

Case No. A01A1749

9. In this appeal, Rolleston challenges the trial court's finding that he was not indigent and that he was therefore able to pay the bill of costs associated with his appeals. The Estate filed a motion to dismiss this appeal. For reasons explained below, we grant the Estate's motion to dismiss.

Rolleston filed a notice of appeal on May 12, 2000, following the trial on damages, in which he directed the Clerk of Fulton County Superior Court to "omit nothing" from the record. As noted above, Rolleston previously appealed the trial court's grant of partial summary judgment to the Estate. In that notice, he also directed the clerk to "omit nothing." Therefore, nearly the entire voluminous record was already on file with this Court when Rolleston filed his most recent notices of appeal.

On January 24, 2001, the clerk served Rolleston with two bills of cost in a total amount of over $4,000. On the final day for payment, Rolleston filed an affidavit of indigence. The Estate filed a traverse affidavit contending that Rolleston's affidavit was untrue and attaching copies of checks payable to Rolleston in excess of $115,000. In its order following a hearing on Rolleston's indigence, the court stated that Rolleston admitted that he had received or negotiated the checks attached to the

Estate's traverse affidavit, and that he admitted the remaining allegations contained in the Estate's affidavit, including his memberships in exclusive private clubs, his employment of a secretary and expenditure of $50,000 for a law office that generated no income, and his residence. The transcript of the hearing on Rolleston's indigence is not contained in the record. The trial court found that Rolleston was not indigent and required him to pay the bill of costs. In this appeal, he challenges the trial court's ruling.

It is clear under Georgia law that a trial court's discretion when reviewing an affidavit of indigence is not appealable. OCGA §5-6-47(b) provides:

> Any party at interest or his agent or attorney may contest the truth of the affidavit of indigence by verifying affirmatively under oath that the same is untrue. The issue thereby formed shall be heard and determined by the trial court under the rules of the court. *The judgment of the court on all issues of fact concerning the ability of a party to pay costs or give bond shall be final.* (Emphasis added.)

See also OCGA §9-15-2(a)(2). Further, we have previously held that "a trial court's findings concerning a party's indigence [are] not reviewable in cases where the affidavit of indigency has been traversed by an opposing affidavit." *Quarterman v. Weiss,* 212 Ga. App. 563, 564 (5) (442 SE2d 813) (1994). See also *Penland v. State,* 256 Ga. 641, 642 (352 SE2d 385) (1987); *Saylors v. Emory Univ.,* 187 Ga. App. 460, 461 (1) (370 SE2d 625) (1988); *Harris v. State,* 170 Ga. App. 726 (318 SE2d 315) (1984).

Accordingly, this appeal presents nothing for our review. The Estate's motion to dismiss is hereby

GRANTED, and Case No. A01A1749 is hereby DISMISSED.

Case No. A01A1750

10. In this appeal, Rolleston argues that the trial court erred in holding him in contempt for entering into a contract to sell a piece of real property in violation of the interlocutory injunction entered on July 7, 1995, and the consent order entered July 24, 2000.

Court of Appeals Rule 27(c)(3)(i) requires that each enumerated error be supported by specific reference to the record or transcript and provides that "[i]n the absence of such reference, the Court will not search for or consider such enumeration." Rolleston has failed to provide citations to the record for a significant portion of the statement of facts contained in his appellate brief, and he did not provide a single reference to the record in his enumerated error. Furtherfore, Rolleston has failed to provide the applicable standard of review and has failed to support this enumeration of error with citation of authority or argument, in violation of Rule 27(a)(3). "Any enumeration of error which is not supported in the brief by citation of authority or argument shall be deemed abandoned." Rule 27(c)(2). Accordingly, this appeal presents nothing for our review, and the order of the trial court holding Rolleston in contempt is affirmed.

Judgment affirmed in A01A1748 and A01A1750; A01A1749 is hereby dismissed. Blackburn, C.J., and Pope, P.J., concur.

COURT OF APPEALS
OF THE STATE OF GEORGIA

ATLANTA, JAN 10 2002

The Court of Appeals hereby passes the following order:

A011748, A011749, A011750. ROLLESTON v. ESTATE OF REBECCA WIGHT CHERRY SIMS, ET AL.,

Upon consideration of the Motion for reconsideration filed on behalf of appellant in the above styled case, it is hereby ordered that the opinion attached hereto be substituted for the original opinion dated December 4, 2001. Motion for Reconsideration is hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 10 2002

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

/s/ Will. L. Masic

3
Supreme Court, U.S.
FILED
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CLERK

No. 02-457

In The

Supreme Court of the United States

MORETON ROLLESTON, JR.,

Petitioner,

v.

The Estate of REBECCA WIGHT CHERRY SIMS,
JOHN RANDOLPH CHERRY, Executor,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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13 pp

QUESTION PRESENTED FOR REVIEW

The sole question presented for review is whether the trial court's denial of Petitioner's motion for a pretrial order served in open court on April 11, 2000, when the case was calendared in first position and called to trial, deprived Petitioner of his due process rights in violation of Amendment V to the Constitution of the United States of America.

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OPINION AND JUDGMENT BELOW

The Petitioner seeks review of a judgment on jury verdict on the sole ground that the trial court did not enter a pretrial order. The judgment which Petitioner seeks to review was entered by the trial court on May 10, 2000.

The affirmance by the Court of Appeals of the State of Georgia, cited as *Rolleston v. Estate of Sims*, 523 Ga. App. 182, 558 S.E. 2d 411 (2001), was appended to Petitioner's Brief as Supplemental Appendix B.

The order of the Court of Appeals of Georgia denying Petitioner's Motion for Reconsideration was entered January 10, 2002, and is appended to Petitioner's Brief as Petitioner's Supplemental Appendix B, p. 16a.

The order of the Supreme Court of Georgia denying Petitioner's Application for Writ of Certiorari, entered May 28, 2002, is appended to Petitioner's Brief as Appendix A.

GEORGIA STATUTE INVOLVED

O.C.G.A. § 9-11-16. Pretrial procedure; formulating issues; order; calendar

(a) Upon the motion of any party, or upon its own motion, the court shall direct the attorneys for the parties to appear before it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses; and

(5) Such other matters as may aid in the disposition of the action.

(b) The court shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues for trial to those not disposed of by admissions or agreements of counsel. The order, when entered, controls the subsequent course of the action unless modified at the trial to prevent manifest injustice. The court, in its discretion, may establish by rule a pretrial calendar on which actions may be placed for consideration as provided in subsection (a) of this Code section and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

ERRORS AND OMISSIONS IN PETITIONER'S STATEMENT OF THE CASE

Petitioner has substantially misrepresented to this Court essential material facts in the underlying case and the state court appeals thereof, either by direct misstatement or by omission, the most blatant examples of which are set forth hereafter:

1. As noted by the Georgia Court of Appeals, Rolleston failed to provide any statement of the manner by which he preserved any

enumeration of error for appeal. [Petitioner's Supplemental Appendix, p. 7a].

2. Petitioner contends that the trial court's failure to issue a written pretrial order deprived Petitioner of statutorily defined rights. [Petitioner's Brief, p. 1]. However, he omits that the trial court did not enter such an order because it was brought on the day of trial after Petitioner failed to respond to Respondent's portion of the pretrial order served 6 days before trial. [Petitioner's Supplemental Appendix, p. 7a]. Further, as the Georgia Court of Appeals noted, ***"The [trial] court deemed Rolleston's proposed pretrial order inadequate and refused to bind the Estate to it, because Rolleston and the Trust refused to list their witnesses."*** [Petitioner's Supplemental Appendix, p. 7a].

3. The record of the underlying case clearly demonstrates that Petitioner failed to object when the trial court deemed Petitioner's portion of the pretrial order inadequate and refused to bind Respondent to such an inadequate submission.

4. The Petitioner failed to request a ruling on his motion for pretrial order from the trial court. Because Petitioner did not object and obtain a ruling on his motion for a pretrial order, he therefore cannot show error in the absence of a ruling. [*International Ass'n of Bridge, Structural & Ornamental Ironworkers, Local 387 v. Moore*, 149 Ga. App. 431, 454 S.E. 2d 438, 443 (1979)].

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

There are no compelling reasons for review of the lower state court's decision on writ of certiorari, and multiple reasons for denying the writ:

1. Petitioner cites no conflict with any decision of the United States court of appeals and a state court of last resort or any departure from the accepted and usual course of judicial proceeding so as to call for an exercise of this Court's supervisory power.

2. Petitioner cites no decision of a federal question by a state court of last resort that conflicts with another state court of last resort or of a United States court of appeals.

3. Petitioner cites no important question of federal law that has not been but should be settled by this Court, or that has been decided in a way that conflicts with relevant decisions of this Court.

4. Petitioner contends that the trial court misapplied a properly stated rule of law, but it is well-established that a writ of certiorari is rarely granted for such reason.

5. Finally, Petitioner failed to raise his constitutional challenge in the court of first instance, Fulton Superior Court. [Supplemental Appendix to Petitioner's Brief, p. 7a].

6. Petitioner further failed to raise any federal question in the Court of Appeals. [Supplemental Appendix to Petitioner's Brief, Appendix B, pp. 3a to 15a].

Therefore, no constitutional challenge is properly presented for review by this Court.

ARGUMENT

A. The Court Did Not Err in Proceeding With the Trial Without Entering a Pretrial Order Because There Was No Pretrial Conference.

Petitioner's sole basis for appeal to this Court is the alleged illegal and unconstitutional failure of the trial court to enter a pretrial order.

The statute cited by Petitioner as the exclusive basis for his claim that his Constitutional rights were violated, O.C.G.A. § 9-11-16, is a statute governing pretrial procedures in cases in which there is a pretrial conference. Under subsection (a) of that statute, the parties may request, or the trial court may, sua sponte, determine, that there be a pretrial conference. If, and only if, such a pretrial conference occurs, subsection (b) is applied to require that, under most circumstances, a pretrial order should then be entered. However, when no pretrial conference is held, there is no requirement to enter a pretrial order. [*Swanson v. State Farm Mutual Automobile Insurance Company*, 242 Ga. App. 616, 530 S.E. 2d 516 (2000)].

As the Court of Appeals correctly noted, "No pretrial conference was requested or held in this case; therefore, the court was not required to enter an order." [Supplemental Appendix of Petitioner's Brief, p. 7a].

B. In the Absence of a Ruling, There Is No Error for This Court to Review.

When the trial court refused to bind Respondent to Petitioner's inadequate submissions, produced after a recess granted to Petitioner to prepare and submit his portion of the pretrial order, Petitioner had the opportunity to insist upon a ruling and make an objection on the record in order to preserve this issue for appeal. It is well settled in Georgia law that Petitioner cannot demonstrate reversible error in the absence of a ruling. [*International Ass'n of Bridge Structural & Ornamental Ironworkers, Local 387 v. Moore,* 149 Ga. App. 431, 433, 454 S.E. 2d 438, 443 (1979)].

While Petitioner did make a motion for pretrial order, his request for a pretrial order on the day of trial was untimely. [*Kickasola v. Jim Wallace Oil Company,* 144 Ga. App. 758, 242 S.E. 2d 483 (1978)].

Even had the trial court interpreted Petitioner's request for a pretrial order as a request for a pretrial conference order, no error could be shown by the court's refusal because "It is not error to refuse a pretrial conference where the motion is untimely." [*Trustees of Trinity College v. Ferris,* 228 Ga. App. 476, 478(2), 49 S.E. 2d 909 (1977)].

C. This Court Lacks Jurisdiction to Consider a Constitutional Question Raised for the First Time in Petitioner's Application in the Supreme Court of Georgia for Writ of Certiorari.

It is black-letter law in Georgia from time immemorial that a constitutional question *must be raised in the first instance* to serve as ground for appeal in a higher court.

> *Jurisdiction is not vested in Supreme Court merely because it is contended that an action or judgment is or would be contrary to some constitutional provision of the Constitution. (Cite omitted) A constitutional question cannot be raised for the first time in the Supreme Court. Where it is sought to invoke a ruling by the Supreme Court on a constitutional question, the question must first have been raised in the trial court and a ruling made thereon and the case brought to the Supreme Court for review.* (Cites omitted) [*Aiken v. Richardson*, 207 Ga. 735, 64 S.E. 2d 54 (1951)].

The requirement of raising the constitutional question in the first instance as a condition precedent for review in a higher court is strictly respected by this court. Petitioner has failed to comply with Rule 14(g)(i) of this Court which requires him to specify

> ***the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears . . . , so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. . . .***
>
> [Rule 14(g)(i) of the Rules of the Supreme Court of the United States].

Petitioner has utterly failed to cite any instance in which he raised federal issues in the trial or appellate

courts of Georgia, but has instead chosen to rely on the maxim "Brevity is precious" and utterly disregard the requirements of this Court's Rule 14(g)(i). The logical conclusion to be drawn from such failure is that Petitioner is unable to provide authority or record citations because none exist. Therefore, logic dictates that Petitioner's constitutional argument – which Petitioner failed to raise in either the trial court or the Georgia Court of Appeals – is fatally out of time and out of place and will not be considered.

To summarize, Petitioner cannot seek a writ of certiorari in this Court to review constitutional questions that were not raised in the trial court or the Court of Appeals of Georgia. However, even if this option were available to Petitioner, he has failed to set forth the elements of a constitutional challenge. Moreover, Petitioner cannot under any circumstances demonstrate the requisite discriminatory state action necessary to trigger constitutional safeguards. Petitioner's invocation of constitutional protection against his personal liability on a money judgment in favor of Respondent would be merely a dismal pleasantry were not the subject so serious and the damage to Respondent and its Decedent so extreme.

CONCLUSION

The decision of the Court of Appeals of Georgia is in accordance with the law of Georgia and the Constitutions of the State of Georgia and the United States. Petitioner has failed to show that he has been denied due process or even that the statutory laws of the State of Georgia were misapplied. Respondent Estate of Rebecca Wight Cherry

Sims submits that for these reasons stated above, the Petition of Moreton Rolleston, Jr., for Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: October 18, 2002